

Stanley G. Emert, Jr.
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FILE

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

June 2, 1992

The Honorable Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED

Re: MM Docket No. 92-61
Brockport, New York

JUN 3 1992

Dear Ms. Searcy:

FCC MAIL BRANCH

I enclose the original and proper copies of the "Second Supplement to 'Opposition to 'Joint Motion to Dismiss Application'" and the "Opposition to 'Joint Motion to Strike Integration and Diversification Statement of Zenitram Communications, Inc.'" for filing in the above-captioned matter on behalf of Zenitram Communications, Inc.

Please send a stamped copy of the same to me in the self addressed stamped envelope.

Thank you for your kind assistance.

Sincerely,


Stanley G. Emert, Jr.

SGE:
Enclosure

cc: Per Certificate of Service

No. of Copies rec'd _____
List A B C D E _____

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Before the
Federal Communications Commission
Washington, D.C. 20554

JUN - 4 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re:
Applications of) MM Docket No. 92-61
LRB BROADCASTING, INC.) File no. BPH-901218MI
DAVID WOLFE) File No. BPH-901219MI
ZENITRAM COMMUNICATIONS, INC.) File No. BPH-901220MG

For Construction Permit
for a new FM Station in
Brockport, New York

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JUN 3 1992

To: The Honorable Richard Sippel
Administrative Law Judge

FCC MAIL BRANCH

**OPPOSITION TO
"JOINT MOTION TO STRIKE INTEGRATION AND DIVERSIFICATION
STATEMENT OF ZENITRAM COMMUNICATIONS, INC."**

Zenitram Communications, Inc. ("Zenitram") , by and through counsel, for its
opposition to the joint motion as noted above filed by , hereby shows:

1. The moving applicants seek to have Zenitram's post hearing integration
and diversification statement stricken on the basis that the same arrived at the
Commission on May 12, 1992¹, rather than May 11, 1992. Upon investigation,
Zenitram has determined that the movants are correct that the pleading was filed on
May 12.

2. On May 11, 1992, Zenitram faxed the statement to an office in
Washington D.C. for filing on that day. It was counsel's understanding that the
document, indeed, had been filed on that day. A copy of the Fax Activity Log is

¹ Receipt of the joint motion was the first knowledge Zenitram had that its Integration and
Diversification Statement had been filed on May 12, instead of May 11, 1992.

attached showing transmission to Miller & Miller P.C.² Instead, the document was filed the next morning. The apparent reason for the late filing was that there was a copying problem caused by a partial fax transmission difficulty.

3 When Zenitram filed its application, it included an Integration and Diversification Statement. Later, that same statement was amended. There is very little difference in pre-hearing designation statement and the post hearing designation statement. No applicant can hardly claim that they were did not know that Zenitram was claiming the credit noted in Zenitram's application, amendment, and post hearing designation Integration Statement.

4. The movants claim that accepting Zenitram's Integration and Diversification Statement would be impermissible upgrading. As was shown above, it is inconceivable that the Commission would require parties to file such statements with their applications if the filing would be of no effect. There, clearly, is no upgrading.

5. The effect of granting the movants' motion would be to deny Zenitram its integration credit. In addition to causing the total disregard of the previous integration statement filings, such a ruling for the movants would essentially cause a dismissal of Zenitram's application.³ That would be extremely harsh for a one day clerical difficulty.

6. The movants have not shown how any prejudice has occurred to them, or how acceptance of Zenitram's Integration and Diversification Statement would in any way cause surprise or unfair comparative advantage. Any protestations to the contrary

² Only the fax to Miller & Miller is shown.

³ Zenitram would have to argue for disqualification of the competing applications. It is without doubt that each applicant has merit in this proceeding, and Zenitram cannot assume there is any realistic chance of disqualification of those competing applicants. Moreover, neither of Zenitram's competitors would have any chance at disqualification of Zenitram's application were it not for the courier/delivery problem that has occurred.


goes beyond reason.

7. There is also a question as to the postmark on the service copies to counsel for LRB Broadcasting. All the service copies were placed with the United States Post Office for mailing on May 11, 1992, in a timely fashion. The postmark was not placed by Zenitram or its counsel, but instead by the Post Office. There has absolutely been no violation of any Commission service rule.

8. Finally, the Commission strongly desires that those holding the rights to broadcast do so a showing of being able to best interest of the public. This will assure that the most qualified applicant is chosen to serve the citizens. The movants have failed to show how the public will be benefitted by granting their motion. To adopt the moving applicants' position would be to effectively reduce the citizens' opportunities from three (3) applicants to two (2), and not necessarily serve the public interest.

9. Based on the foregoing, Zenitram requests the motion to dismiss be DENIED.

Zenitram Communications, Inc.

By: 
Stanley G. Emert, Jr.
Its Attorney

Law Office of Stanley G. Emert, Jr.
2318 2d Avenue, Ste. 845
Seattle, Washington 98121
(206) 525-5459

June 2, 1992

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "OPPOSITION TO 'JOINT MOTION TO STRIKE INTEGRATION AND DIVERSIFICATION STATEMENT OF ZENITRAM COMMUNICATIONS, INC.'" has been sent by prepaid United States mail, first class, by placing the same in United States mailbox on the 2d day of June, 1992, to the following:

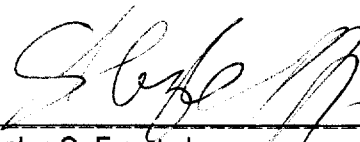
The Honorable Richard Sippel
Federal Communications Commission
2000 L Street N.W.
Washington D.C. 20554

Charles Dziedzic, Esq.
Chief, Hearing Branch
Federal Communications Commission
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Stanley G. Emert, Jr.

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PC

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Number Dialed : 12027758519
Sending : Doc 2. Untitled-fax
Dialed Phone : Mon, May 11, 1992 1:54:29 PM
... Error : -6003, Last Page Sent was not confirmed. ...
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Page 1 - 12 Transmission Speed : 9600 BPS
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